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FILED
YOLO SUPERIOR COURT

JUN 18 2008

by B36
Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF YOLO

10 THE PEOPLE OF THE STATE OF
11 CALIFORNIA,

Dept.

Case No. 08003350

COMPLAINT

12 Plaintiff,

13 vs.

14 MARCO ANTONIO TOPETE

15 Defendant(s)

16
17 I, the undersigned, say, on information and belief, that in
18 the County of Yolo, State of California:

19 Count 1 : On or about June 15, 2008, MARCO ANTONIO TOPETE
20 did commit a FELONY, namely, a violation of Section 187(a) of
21 the California Penal Code, MURDER, in that MARCO ANTONIO TOPETE
22 did willfully and unlawfully kill a human being, to wit, Jose
23 Antonio Diaz, with malice aforethought.

24 SPECIAL CIRCUMSTANCE A: It is also alleged within the
25 meaning of Section 190.2(a)(7) of the California Penal Code,
26 SPECIAL CIRCUMSTANCES FOR MURDER OF A PEACE OFFICER, that the
27 victim was a peace officer, as defined in Penal Code Sections
28 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35,

1 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11 and 830.12,
2 who, while engaged in the course of the performance of his or
3 her duties, was intentionally killed, and MARCO ANTONIO TOPETE
4 knew, and reasonably should have known, that the victim was a
5 peace officer engaged in the performance of his or her duties.

6 SPECIAL CIRCUMSTANCE B: It is also alleged that the murder
7 alleged above was committed for the purpose of avoiding and
8 preventing a lawful arrest within the meaning of Section
9 190.2(a)(5) of the California Penal Code, SPECIAL CIRCUMSTANCES
10 FOR MURDER COMMITTED TO AVOID AND PREVENT LAWFUL ARREST.

11 SPECIAL CIRCUMSTANCE C: It is also alleged that MARCO
12 ANTONIO TOPETE is subject to a SPECIAL CIRCUMSTANCE within the
13 meaning of Section 190.2(a)(22) of the California Penal Code in
14 that MARCO ANTONIO TOPETE intentionally killed the victim while
15 MARCO ANTONIO TOPETE was an active participant in a criminal
16 street gang, as defined in subdivision (f) of Section 186.22,
17 and the murder was carried out to further the activities of the
18 criminal street gang.

19 SPECIAL CIRCUMSTANCE D: It is also alleged that defendant
20 is subject to a SPECIAL CIRCUMSTANCE within the meaning of
21 Section 190.2(a)(15) of the California Penal Code in that
22 defendant intentionally killed the victim by means of lying in
23 wait.

24 Count Enhancement 1a: It is further alleged that during the
25 commission or attempted commission of the felony charged above,
26 MARCO ANTONIO TOPETE did willfully, unlawfully, intentionally,
27 and personally discharge a firearm, and proximately cause great
28 bodily injury as defined in Penal Code Section 12022.7, within

1 the meaning of Section 12022.53(d) of the California Penal Code,
2 INTENTIONAL AND PERSONAL DISCHARGE OF FIREARM CAUSING GREAT
3 BODILY INJURY.

4 Count 2 : On or about June 15, 2008, MARCO ANTONIO TOPETE
5 did commit a FELONY, namely, a violation of Section
6 12031(a)(1)(2)(C) of the California Penal Code, CARRYING LOADED
7 FIREARM BY A PERSON WHO IS AN ACTIVE PARTICIPANT IN A CRIMINAL
8 STREET GANG, in that MARCO ANTONIO TOPETE while an active
9 participant in a criminal street gang as defined in Penal Code
10 Section 186.22(a), did willfully and unlawfully carry a loaded
11 firearm.

12 Count 3 : On or about June 15, 2008, MARCO ANTONIO TOPETE
13 did commit a FELONY, namely, a violation of Section 12021(a)(1)
14 of the California Penal Code, POSSESSION OF FIREARM BY PERSON
15 PREVIOUSLY CONVICTED OF A FELONY, in that MARCO ANTONIO TOPETE
16 did willfully and unlawfully possess and have under MARCO
17 ANTONIO TOPETE's custody and control any firearm after MARCO
18 ANTONIO TOPETE had been previously convicted of a felony under
19 the laws of the State of California, the United States or
20 another state.

21 Count 4 : On or about June 15, 2008, MARCO ANTONIO TOPETE
22 did commit a FELONY, namely, a violation of Section 2800.2(a) of
23 the California Vehicle Code, EVADING A PEACE OFFICER WITH
24 RECKLESS DRIVING, in that MARCO ANTONIO TOPETE did willfully and
25 unlawfully operate a motor vehicle in a willful and wanton
26 disregard for the safety of persons and property and with the
27 intent to evade and did willfully flee and otherwise attempt to
28 elude a pursuing peace officer's motor vehicle when the

1 following conditions existed: (a) The peace officer's motor
2 vehicle was exhibiting at least one lighted red lamp visible
3 from the front and MARCO ANTONIO TOPETE either saw and
4 reasonably should have seen the lamp; (b) The peace officer's
5 motor vehicle was sounding a siren as may be reasonably
6 necessary; (c) The peace officer's motor vehicle was
7 distinctively marked; and (d) The peace officer's motor vehicle
8 was operated by a peace officer as defined in Chapter 4.5 of the
9 Penal Code, and that peace officer was wearing a distinctive
10 uniform.

11 Count 5 : On or about June 15, 2008, MARCO ANTONIO TOPETE
12 did commit a FELONY, namely, a violation of Section 186.22(a) of
13 the California Penal Code, CRIMINAL STREET GANG ACTIVITY, in
14 that MARCO ANTONIO TOPETE did willfully and unlawfully actively
15 participate in any criminal street gang with knowledge that the
16 members of that street gang engage in and have engaged in a
17 pattern of street gang activity, and MARCO ANTONIO TOPETE did
18 willfully and unlawfully promote, further, and assist in any
19 felonious criminal conduct by members of that gang.

20 Count 6 : On or about June 15, 2008, MARCO ANTONIO TOPETE
21 did commit a FELONY, namely, a violation of Section 273a(a) of
22 the California Penal Code, ABUSING OR ENDANGERING HEALTH OF A
23 CHILD, in that MARCO ANTONIO TOPETE did willfully cause and
24 permit said child to be placed in such a situation that the
25 child's person and health was endangered.

26 Case Enhancement a : It is further alleged that MARCO
27 ANTONIO TOPETE was previously convicted of a serious felony
28 within the meaning of Section 667(a)(1) of the California Penal

1 Code, ENHANCEMENT FOR HABITUAL CRIMINALS, in that MARCO ANTONIO
2 TOPETE was convicted of a serious felony listed in Section
3 1192.7 of the Penal Code, to wit, Section 245(b) of the
4 California Penal Code, on October 9, 1998 in the County of Yolo.

5 Case Enhancement b : It is further alleged that MARCO
6 ANTONIO TOPETE was previously convicted of a serious felony
7 within the meaning of Section 667(a)(1) of the California Penal
8 Code, ENHANCEMENT FOR HABITUAL CRIMINALS, in that MARCO ANTONIO
9 TOPETE was convicted of a serious felony listed in Section
10 1192.7 of the Penal Code, to wit, Section 246.3 of the
11 California Penal Code, on August 30, 1994 in the County of
12 Sacramento.

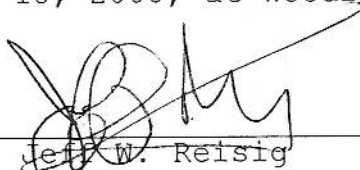
13 Case Enhancement c : It is further alleged that MARCO
14 ANTONIO TOPETE was previously convicted of a felony within the
15 meaning of Section 667.5(b) of the California Penal Code,
16 ENHANCEMENT FOR PRIOR PRISON TERM, in that MARCO ANTONIO TOPETE
17 was convicted of a felony on January 6, 1992, in the County of
18 Yolo, and that MARCO ANTONIO TOPETE served a prison term for
19 such conviction and that MARCO ANTONIO TOPETE has not remained
20 free of prison custody or free of a felony conviction for five
21 years, within the meaning of Section 667.5 of the Penal Code.

22 Case Enhancement d : It is further alleged that MARCO
23 ANTONIO TOPETE was previously convicted of a serious felony
24 within the meaning of Section 667(e)(2) of the California Penal
25 Code, ENHANCEMENT FOR TWO OR MORE PRIOR CONVICTIONS FOR SERIOUS
26 FELONIES, in that MARCO ANTONIO TOPETE was convicted of two or
27 more prior felonies as defined in Section 667(d) of the
28 California Penal Code, and listed in Sections 667.5(c),

1 1192.7(c) of the Penal Code as listed below: 1. Conviction
2 One was on October 9, 1998, for a violation of Section 245(b) of
3 the California Penal Code, to wit, Assault with a Semiautomatic
4 Firearm, in the County of Yolo. 2. Conviction two was on
5 August 30, 1994, for a violation of Section 246.3 of the
6 California Penal Code, to wit, Willful Discharge of a Firearm,
7 in the County of Sacramento.

8 I declare under penalty of perjury that the foregoing is
9 correct.

10 Executed on June 18, 2008, at Woodland, California.

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13 Jeff W. Reising
14 District Attorney
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